The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4)

Initial report of Austria (CRC/C/11/Add.14; HRI/CORE/Add.8; CRC/C/Q/AUSTRIA/1 (list of issues); written replies of the Austrian Government to the questions raised in the list of issues (in-session document with no symbol, in English only))

1. At the invitation the Chairperson, Mr. Cede, Mr. Schütz, Mr. Filler, Ms. Jellinek, Ms. Kisser, Mr. Stormann and Mr. Siedler (Austria) took places at the Committee table.

2. Mr. CEDE (Austria), introducing the delegation of his country, said he wished to point out an unusual circumstance: Mr. Siedler, a youth representative who belonged to the Austrian Student Federation, would participate in the discussion. He also wished to reaffirm his country's commitment to the implementation of the Convention; in that regard, Austria, a 12-year member of the Commission on Human Rights, had taken a number of initiatives on behalf of children, and in particular in the area of juvenile justice. He was pleased by the large number of States that had ratified the Convention, which was now virtually universal in scope. With regard to the protection of children's rights, the Austrian authorities were endeavouring, within the framework of both national and European initiatives, to combat all forms of sexual abuse, including the dissemination on the Internet of pornographic materials showing images of children. Efforts had been undertaken to draft and negotiate an additional protocol to the Convention which would cover the use of images of children in pornographic materials disseminated through modern telecommunication methods. Although the initial report of Austria had been prepared in 1996, the Committee would find new information in the written replies, which had been formulated recently and were as comprehensive as possible.

3. Mr. SCHÜTZ (Austria) said he was particularly pleased to participate in the deliberations of the Committee since he had taken part in the Working Group that had drafted the Convention. Before ratifying that instrument, the Austrian Government had, at the request of the national assembly, engaged the services of independent experts to identify any possible conflict between the Convention and national law. No legal contradiction had emerged at that time, which did not mean that the Government deemed it unnecessary to improve the situation of children in various areas of national policy: it considered the Convention to be a set of minimum rules. The Committee, by its very existence, had galvanized the formulation of relevant policies. The Penal Code had accordingly been amended in 1994 by the addition of section 207 bis, which established criminal sanctions for not only the production and dissemination, but also the acquisition and possession of pornographic materials using images of children under the age of 14. In addition, the Penal Code had again been amended in 1996 to address the matter of sexual tourism; accordingly, Austrians who normally resided in Austria and who committed abuses against children fell within Austrian criminal jurisdiction even if such abuses took place abroad. Another amendment to the Penal Code had entered into force in October 1998, providing that for cases of sexual abuse, statutory limitations began to apply only after the victim had attained

the age of majority. The situation of children involved in criminal proceedings had improved considerably, since arrangements could now be made for less stressful hearings to be held outside the courts with the assistance of psychologists; that practice was obligatory for victims under the age of 14, and could be requested by a child aged 14 or over. National legal provisions regarding sexual offences were the subject of an ongoing evaluation conducted by working groups in the Ministry of Justice, whose task was to formulate proposals for reform.

4. Turning to matters of civil law, he said that the Government planned promptly to reduce the age of majority from 19 to 18, and envisaged measures to ensure that a child's views would be given a better hearing. For example, the courts would be able to intervene in cases where a child agreed to follow a course of medical treatment which his parents opposed, and a child would have the right to be in close contact with members of his family who were not immediately responsible for him. Reforms should be made which would allow children capable of forming their own views to address the courts in their own right and to lodge appeals without the assistance of a legal representative. The Ministry of Justice was preparing a proposal which would be transmitted to other relevant Ministries for their views, and then to the Council of Ministers for approval and to the Parliament for adoption. Furthermore, a law specifically providing protection against violence in the family had entered into force in 1997; it enabled the police to expel a violent parent from the home; allowed the victims, namely, the other parent and the children, to remain in the home; and protected them from threat.

5. Ms. JELLINEK (Austria) said that the situation of foreigners, and in particular foreign children, on Austrian soil had been considerably improved by the entry into force of a new law regarding foreigners, a new law regarding asylum, and amendments to the nationality law. The new law regarding foreigners, which had entered into force in January 1998, provided that foreigners who had been born in Austria, or who had arrived on Austrian soil before the age of 3 and had been brought up in Austria, even if they had not applied for Austrian citizenship or if they had committed offences, could not be barred from remaining in the country. As a general rule, the longer a foreigner had resided in Austria, the greater his protections under the law. Thus, a foreigner who had lived longer than five years on Austrian soil could not be denied permission to remain or be expelled from the country, even if he lost his job. If he committed an offence, whether or not he was denied leave to remain depended on how long he had resided in Austria. In addition, immigrants enjoyed the right to family reunification. More specifically, a foreigner who had immigrated in 1998 had the right to bring into Austrian territory his spouse and any children under the age of 19; and a foreigner who had immigrated before 1998 had the right to bring in his spouse and any children under the age of 14. In both cases, a quota had been set, but the new law on foreigners provided that the decision must apply to the whole family: in future it would not be possible to accept a foreigner while at the same time refusing his children. In addition, a wholly new provision to the law regarding foreigners established that a minor could only be held in custody pending an expulsion decision as a last resort. Finally, the law concerning nationality had been amended to allow for an unaccompanied minor to

apply for Austrian citizenship after having resided in the country for four years. He could do so beginning at the age of 14, even if his legal representative was opposed.

6. Mr. SIEDLER (Austria) said that participation by pupils and students in school and university life was entirely obligatory in all the federal states. In the secondary schools, each class chose a representative whose role was to discuss with teachers any problems that might arise. Another representative elected by the entire school body, had the task of facilitating the relationship between pupils, teachers, and the school principal. In the universities, student representatives elected at the state level participated in a higher council. That council chose one of its members to represent all Austrian students at meetings conducted by the educational authorities.

7. Mr. CEDE (Austria) pointed out that NGOs, some of which had formed associations for that purpose, played a crucial role in the implementation of the Convention.

8. The CHAIRPERSON thanked the members of the delegation of Austria for their statements and invited the members of the Committee to raise questions concerning general measures of implementation.

9. Mr. FULCI observed with satisfaction that the report of Austria had been prepared in accordance with the Committee's guidelines, greatly facilitating its consideration of the implementation of the Convention in that country. He nevertheless noted with concern that there was no single independent body responsible for monitoring the practical application of each of its articles. That lack was probably attributable to two factors, the federal structure of the country, and the fact that the Convention was not directly enforceable under the national law. Furthermore, the involvement of civil society, and in particular NGOs, in the implementation of the Convention appeared to be inadequate; in his view, greater efforts should be made to enhance public awareness of the objectives of the Convention. Although he commended the Austrian Government for having included Mr. Siedler, the student representative, in the delegation, he regretted that the executive and legislative branches were unrepresented.

10. Mrs. PALME said that she had read with great interest the initial report of Austria, which well described, in the general sense, the way in which the authorities were fulfilling their responsibilities under the Convention. In that regard, she noted that the Austrian legal system had undergone important reforms with regard in particular to the punishment of sexual offences. And yet, since the provisions of the Convention were not directly applicable under domestic law, and since the federal authorities carried out a policy of decentralization which could hinder coordination at the central level, she found it necessary closely to scrutinize that country's implementation of the Convention. It would be useful to know how budgetary reductions in social programmes would affect children and if the special support programmes for children would not, in fact, make children an isolated group within society. She wondered whether the budgetary cuts had already brought about a decline in teacher/pupil relations.

11. Mr. RABAH said he would like clarifications concerning the lack of compatibility between the Convention on the Rights of the Child and the European Convention on Human Rights, which had been invoked to justify the reservations entered by Austria in respect of articles 13 and 15 of the Convention. It would also be useful to know whether NGOs had participated in the preparation of the initial report and whether the Convention had been translated into the languages of ethnic communities living in Austria.

12. Mrs. OUEDRAOGO welcomed the balanced, instructive nature of the report, and regretted that no information had been supplied regarding the ministries or NGOs that had participated in its preparation. She wondered whether there were particular reasons for the late submission of the report.

13. There was every reason to welcome the unanimous adoption by Parliament of resolution E 156-NR XVIII.GP, containing a catalogue of the measures taken to implement the objectives set out in the Convention; she would like to know if specific time-limits had been set for the accomplishment of those objectives. With regard to the status of the Convention under domestic law and new national legislation, she observed that the Austrian Constitution envisaged two alternatives: one, the transformation of international law into national law; and two, the integration of international law into national law, subject to the adoption of laws necessary for the application thereof in the country. It would be useful to know under which of those systems the Convention fell. She also noted that there were still areas in which the national legislation was not wholly in accordance with the Convention, and in particular the right to family reunification and the rights of child asylum seekers and refugees. If the proposal of elaborating a special federal constitutional law on the protection of children and adolescents, discussed in the written replies provided by the delegation, were to be retained, what would be the status of its provisions in relation to the Constitution, and what would be their sphere of application? Recalling that the Committee on Economic, Social and Cultural Rights had recommended the adoption of measures that would place international human rights instruments on an equal footing with the European Convention on Human Rights in the domestic legal order, she inquired what steps, if any, had been taken.

14. Mrs. KARP commended the Austrian Government for the initiative it had undertaken, in collaboration with the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna, to establish and strengthen juvenile justice administration systems at the national level. She also praised Austria for having been one of the first countries to ban corporal punishment in the family. She too would welcome clarifications concerning any discrepancies between the Convention on the Rights of the Child and the European Convention on Human Rights, since in her view those two instruments had entirely similar objectives. She did not understand the reservation entered in respect of article 17, which correctly envisaged that States parties should encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being.

15. She would also like to know how the same protection could be guaranteed, in all spheres, to children in different federal states, in the absence of a central coordinating body. It was her impression that some States had better

programmes for the implementation of the Convention and that ombudsmen had a larger role in some States than in others. To what extent were NGOs involved in the formulation of reports submitted to the Committee and in the implementation of the Convention? The Austrian delegation should also describe measures undertaken by the Government to implement economic, social and cultural rights to the maximum extent of their available resources, as provided in article 4 of the Convention. She would also like to know, in that context, whether children, and especially those in disadvantaged circumstances, had suffered from the cuts in social spending. Lastly, the Austrian Government should indicate whether the Government was planning to increase its official development assistance contribution to 7 per cent of gross domestic product and whether the Government ensured that such assistance served the needs of children.

16. Mrs. MOKHUANE said she would like clarifications on the roles of ombudsmen for children and adolescents, child protection representatives, and social workers who dealt with children. Did the Government envisage increasing its subsidies to NGOs to assist them in making a greater contribution to the work of implementing the Convention?

17. Mr. KOLOSOV asked whether the State party's report had been translated into German, whether the federal authorities had the right to oversee the manner in which the states legislated in matters of the rights of the child, whether such laws differed from state to state, and whether, in the view of the delegation, the introduction of a single European currency might have a negative impact on children, especially children in disadvantaged circumstances.

The meeting was suspended at 11.45 a.m. and resumed at 11.55 a.m.

18. Mr. FILLER (Austria) said that the Federal Ministry of the Environment, Youth and the Family had requested all federal ministries, state governments, NGOs and ombudsmen for children and adolescents to transmit to it their observations concerning the implementation of the Convention. The initial report of Austria was in fact a synthesis of all the comments that had been received. In addition, the German version of the initial report was available and would be published along with the Committee's recommendations in the near future. The Government was attempting, for its part, to have the Convention translated into the languages of the various ethnic minorities, but it had come up against a number of linguistic obstacles. For example, the language spoken by the Croatian minority differed perceptibly from official Croatian, and the language spoken by the Sinti was a non-written one.

19. Turning to the matter of social expenditures, he said that the Government had indeed reduced family allowances in 1995, but that they had been raised in 1999 and would be again in 2000, fully compensating for the previous cut. According to the OECD, the Austrian system of allowances for families and children was one of the best in the world. Furthermore, NGOs were closely involved in the implementation of the Convention and subsidized by the State. For example, a large NGO association for the protection of children, the Bundesjugendring, received 100 million Austrian schillings from the State each year, which it generously distributed among the various NGOs that formed part of it.

20. Given the federal structure of Austria, the legal mandates of ombudsmen for children and adolescents differed from state to state. The federal authorities could request ombudsmen to cooperate with them but could not impose any control over the way in which they carried out their task on behalf of children. It was worth pointing out in that context that a number of NGOs were not in favour of creating a centralized federal system to monitor the implementation of the Convention.

21. With regard to the incorporation of the rights of the child into constitutional law, such a measure in fact figured on the list of objectives set out in resolution E 156-NR XVIII.GP, adopted by Parliament. Before taking a decision in that regard, however, the Government was waiting for the political and legal debate on that question to conclude. According to a study conducted by the Federal Ministry of the Environment, Youth and the Family in cooperation with the ombudsmen for children and adolescents, which would be published on 26 January 1999, efforts should be made to increase the participation of youth in the country's political life. At Austria's initiative, the European Union had, in fact, adopted a text addressing that subject. Although institutions for children fell within the competence of the federal states, the Federal Government devoted considerable sums to their development (1.2 billion schillings in 1997 and 1998). In addition, the social integration of disabled persons counted among the objectives listed in the resolution adopted by Parliament. A number of measures had been taken to facilitate the integration of disabled children into regular schools and kindergartens. Family allowances for disabled children were also larger than regular family allowances.

22. In that resolution Parliament had also recommended that efforts should be undertaken to combat violence in society, in the home, and in the media. In that regard, a system had been established to provide parental guidance for films shown on television. A plan of action had also been adopted, in collaboration with Internet servers, to combat child pornography. The Penal Code, paragraph 2078, criminalized the acquisition, possession and distribution of pornographic materials showing images of children.

23. The final point of that resolution dealt with the matter of children facing the divorce or separation of their parents. In response to the recommendations contained therein, the Federal Ministry of Justice, in cooperation with the Federal Ministry of the Environment, Youth and the Family, had drawn up a proposal for the establishment of family counselling, mediation and guidance services, to provide support for parents and children in such situations. The proposal had been successful, and the results had served as the basis for a reform of the family law, which naturally emphasized the best interests of the child. The resolution also contained recommendations on measures to combat sexual tourism involving children as victims. As a response to one of those recommendations, video cassettes had begun to be shown in aeroplanes travelling to countries where sexual tourism was practised, a project conducted by the Federal Ministry of the Environment, Youth and the Family in cooperation with the Commission of the European Communities.

24. Mr. STORMANN (Austria), replying to questions raised by members of the Committee on the possible disparities in the situation of children from one

state to another, indicated that the Austrian federal system, as set out in the Federal Constitution, was indeed designed to protect citizens against that sort of discrimination. Thus, although the decision whether to adhere to an international instrument fell to the federal legislative authorities, once it had been ratified, all the federal states were under an obligation to implement it. That was therefore the case with the Convention on the Rights of the Child, which was equally applicable in all the states. Although the establishment of general legislation regarding the protection of children and youth fell to the federal legislature, the details of its local application were left to the discretion of the federal states. Thus the framework of Austrian social policy on children and youth was the same in all the federal states. The Federal Constitution, moreover, provided for a strict system of reciprocal control and supervision over the legality and constitutionality of legislative texts adopted by each of the states as well as by the Federation itself. The administration of the states was nevertheless entrusted to the states themselves and the Federal Government was not empowered to intervene, even for political reasons. Accordingly therefore, although children had the same status in all the federal states, significant differences could exist, inter alia, in the level, responsibilities and remuneration of the ombudsmen for children and adolescents, who were appointed by the states. Every effort was made to ensure that children did not suffer from those disparities, however.

25. At the time of its ratification of the Convention, the Government had not deemed it necessary to incorporate that instrument into Austrian constitutional law because not only had the independent experts responsible for assessing its compatibility with the federal legislation concluded that domestic law was fully in harmony with its provisions, but the federal authorities had determined that it was unwise further to burden the constitutional system, rendering more difficult the task of the courts that were responsible for implementing the law.

26. Ms. KISSER (Austria) said that Austrian legislation had been modified to increase the allowances paid to children from families that were badly off, with a view to providing equal educational opportunities to all young people. The start of the 1998-1999 school year had admittedly been marked by teacher strikes brought about by changes in the law that regulated their salaries. After negotiations among the Ministry of Education, the student unions, and parent representatives, an agreement had been reached which had brought an end to the strike. The Minister of Education had promised to recruit more teachers and to reduce bureaucracy at the state level, and had pledged to maintain a high educational standard in all school establishments.

27. The Ministry of Education worked closely with NGOs made up of parents and school representatives; there were many NGO associations which contributed to the efforts made by the Ministry to improve the quality of education in the country. One of the NGO associations had prepared a brochure for children containing the text of the Convention in simplified form, which helped children to understand their rights in concrete terms.

28. Mr. SIEDLER (Austria) said that teachers had struck at the start of the year to protest against staff shortages and inadequate salaries. The strike had naturally interfered with the teaching schedule. Although the situation

for the most part had returned to normal, the atmosphere in schools remained tense, because students felt they had borne the brunt of a conflict between teachers and the Ministry of Education which had nothing to do with them. When situations of that kind arose, all pupils, rich and poor, suffered from the disruption of their studies.

29. Mr. SCHÜTZ (Austria) said, with regard to social benefits for children, that under the Austrian system, the Government guaranteed the provision of financial resources for the maintenance and education of children. When a court rendered a divorce or separation decision, and the parent who was required to pay child support was unable to do so, the Government advanced the necessary sum for maintenance and education, which the parent was required subsequently to reimburse. The latest figures indicated that, of the total amount paid out by the Government, 45 per cent had been paid back by parents and that 55 per cent therefore was an official Government expense. In any event, the authorities attended to the protection of children's rights as a matter of priority, regardless of the financial status of their parents.

30. Mr. CEDE (Austria), replying to the question raised about Austria's reservations in respect of articles 13 and 15 of the Convention, said that when that instrument had been ratified, the Austrian experts had considered that the wording of the articles in question, which established certain restrictions on the exercise of the right to freedom of expression and freedom to seek, receive and impart information, was not wholly compatible with the wording of articles 10 and 11 of the European Convention on Human Rights. At that time, the European Convention on Human Rights had already formed part of Austrian domestic law, and the Government had consequently considered it necessary to avoid any clash between its obligations under those two instruments. The delegation nevertheless took due note of the remarks made by the members of the Committee regarding Austria's reservations to the Convention, and would communicate them to the Government, taking into account as well the recommendation contained in the Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna in 1993, which called on States to re-examine their reservations with a view to their withdrawal.

31. The CHAIRPERSON thanked the delegation of Austria for its replies to the initial questions raised by the members of the Committee concerning the implementation of the Convention in that country.

The meeting rose at 1 p.m.